

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA *ex rel.*
JAYDEEN VICENTE and JAYDEEN
VICENTE, individually,

No. C 07-04911 CRB

ORDER STAYING ACTION

Relators,

v.

ELI LILLY AND CO.,

Defendant.

Relators filed this state law qui tam action in state court and defendant removed to federal court. Relators seek to recover monies the State of California paid for the prescription drug Zyprexa. They contend that defendant encouraged physicians to prescribe Zyprexa for off-label uses (that is, uses not approved by the Food and Drug Administration), thereby causing pharmacies to submit “false” Medicaid claims to the State for reimbursement of those prescriptions. Relators also allege that defendant paid “kick backs” to physicians to encourage them to write prescriptions for Zyprexa.

Now pending before the Court are (1) relators’ motion to remand to state court, (2) defendant’s motion to stay this action pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) on whether to transfer this action to MDL 1596 in the Eastern District of New York, and (3) defendant’s motion to dismiss. After carefully

1 considering the parties' papers and arguments, the Court concludes that oral argument is
2 unnecessary, see Local Rule 7-1(b) and GRANTS the motion to stay.

3 The JPML is scheduled to hold a hearing on the transfer issue on January 30, 2007;
4 thus, any delay from a stay is minimal. Moreover, the MDL court has previously decided the
5 precise jurisdictional issue raised by relators' motion to remand. See, e.g., West Virginia v.
6 Eli Lilly and Co., 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007); Louisiana ex rel. Foti v. Eli
7 Lilly and Co., 375 F. Supp. 2d 170 (E.D.N.Y. 2005). Accordingly, the interests of federal
8 uniformity and judicial economy weigh in favor of a stay. Should the JPML deny transfer of
9 this action to MDL 1596, relators may renotice their motion to remand on shortened time
10 since the issues are already fully briefed.

11 **IT IS SO ORDERED.**



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13 Dated: December 13, 2007
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE